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Client/Matter: 070386-0303769

REMARKS

Claims 1-22 and 24-30 are pending. By this amendment, claims 1, 14, and 30 are amended. Reconsideration in view of the above amendments and following remarks is respectfully requested.

Claim 14 was rejected under 35 U.S.C. §112, second paragraph. Claim 14 has been amended in accordance with the suggestion of the Office Action. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1-6, 8-18, 22 and 25-30 were rejected under 35 U.S.C. §103(a) over Kaufman (U.S. Patent 4,595,300) in view of Nimberger et al. (U.S. Patent 6,352,361). The rejection is respectfully traversed.

Claim 1 recites a temperature probe for measuring the internal temperature of a mass of packed tobacco product including, *inter alia*, an elongated tubular shaft having a hollow interior, an insulating structure mounted on the elongated shaft, a heat conducting structure coupled to the insulating structure, a thermocouple coupled to the heat conducting structure and extending into the hollow interior of the elongated shaft, a control device electrically communicated to the thermocouple and operable to determine a temperature from the thermocouple and a lifting mechanism coupled to the elongated tubular shaft and the control device that moves the heat conducting structure and the elongated tubular shaft between a raised position and a lowered position.

The Office Action on page 3, paragraph number 4, alleges that Kaufman discloses a temperature probe 24, as shown in Figure 1, having an elongated tubular shaft having a hollow interior, a heat conducting structure, and a thermocouple coupled to the heat conducting structure and extending into the hollow interior of the elongated shaft. However, the Office Action does not identify which portions of Figure 1, or the corresponding text, of Kaufman actually includes these disclosures. It is respectfully submitted that the Office Action does not identify the portions of Kaufman that include these features as Kaufman does not disclose or suggest an elongated tubular shaft having a hollow interior, a heat conducting structure, and a thermocouple coupled to the heat conducting structure, as recited in claim 1. Figure 1 of Kaufman, and the corresponding text, merely disclose a thermocouple probe 24 that extends into the well 12 and is inserted by the drive wheel 21.

The Office Action on page 5, lines 9-11, alleges that Nimberger et al. disclose a temperature sensing device including an elongated tubular shaft 62D having a hollow interior, an insulated structure 70D mounted on the elongated shaft 62D, and heat conducting

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structure 36D coupled to the insulating structure 70D. It is respectfully submitted, however, that the upper mounting housing 62D of Nimberger et al. is not movable between a raised position and lowered position, as recited in claim 1.

As the combination of Kaufman and Nimberger et al. fails to include all of the features recited in claim 1, it is respectfully submitted that the combination fails to present a *prima facie* case of obviousness.

Claims 2-6, 8-18 and 22 recite additional features of the invention and are allowable for the same reasons discussed above with respect to claim 1 and for the additional features recited therein.

With respect to claim 25, the Office Action on page 7, lines 7-11, alleges that Kaufman as modified by Nimberger et al. disclose method steps of providing a temperature probe, inserting the probe into a mass so that the heat conducting structure is disposed and thermal communication with the product on the interior of the mass, and determining the internal temperature of the mass based on information from the probe. The Office Action on page 7, lines 11-13, then alleges that the method steps claim by Applicant are steps to calibrate the temperature probe and that it is well-known in the art to calibrate temperature measuring devices prior to performing a measurement. The Office Action concludes on page 7, lines 13-16, that it would have been obvious to a person having ordinary skill in the art at the time the invention was made to calibrate the temperature probe disclosed by Kaufman as modified by Nimberger et al. before using it in order to obtain an accurate measurement.

It is respectfully submitted that the combination of Kaufman and Nimberger et al. fails to present a *prima facie* case of obviousness against claim 25 as the Office Action acknowledges that the combination fails to include, at least, comparing the temperature of the heat conducting structure to a predetermined temperature range to determine if the temperature of the heat conducting structure is within the predetermined range.

It is respectfully submitted that the Examiner's conclusion that the Applicant is claiming a calibration step and that it is well-known in the art to calibrate temperature measuring devices prior to performing a measurement is incorrect. Applicant is not claiming a calibration step or method, Applicant is claiming the method recited in claim 25.

It is also respectfully submitted that it is unclear if the Examiner is relying upon the taking of Official Notice to cure the deficiencies of the combination of Kaufman and Nimberger et al. with respect to claim 25. In the event that the Examiner's conclusion that "it is well-known in the art to calibrate temperature measuring devices prior to perform a

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measurement" is intended to be the taking of Official Notice, in accordance with MPEP §2144.03, Applicant respectfully requests that the Examiner provide the documentary evidence in the next Office Action if the rejection is maintained. In the absence of such documentary evidence, it is respectfully submitted that the rejection must be withdrawn.

Claims 26-29 recite additional features of the invention and are allowable for the same reasons discussed above with respect to claim 25 and for the additional features recited therein.

With respect to claim 30, it is respectfully submitted that the combination of Kaufman and Nimberger et al. does not disclose or suggest a lifting mechanism coupled to an insulated shaft that moves the heat conducting structure and the insulated shaft between a raised position and a lower position. Neither the upper mounting housing 62D nor the plastic thermo isolation sleeve 70D of Nimberger et al. is raised or lowered by a lifting mechanism. Accordingly, the combination of Kaufman and Nimberger et al. fails to include all the features of claim 30 and fails to present a *prima facie* cause of obviousness.

Reconsideration and withdrawal of the rejection of claims 1-6, 8-18, 22 and 25-30 over Kaufman and Nimberger et al. are respectfully requested.

Claim 7 was rejected under 25 U.S.C. §103(a) over Kaufman in view of Nimberger et al. in view of Benzinger (U.S. Patent 4,191,197). The rejection is respectfully traversed.

Claim 7 recites additional features of the invention and is allowable for the same reasons discussed above with respect to claim 1 and for the additional features recited therein. In addition, it is respectfully submitted that Benzinger fails to cure the deficiencies of Kaufman and Nimberger et al. with respect to claim 1. Accordingly, even assuming it would have been obvious to combine Kaufman, Nimberger et al. and Benzinger, such a combination would not have resulted in the invention of claim 1. In addition, it is respectfully submitted there is no suggestion or motivation to combine Kaufman, Nimberger et al. and Benzinger as Benzinger is directed to a thermometer system for improved body temperature measurements, especially within the ear canal, and one of ordinary skill in the art would not have been motivated to combine these teachings with the devices of Kaufman and Nimberger et al. for metering fluids or gases in a pipeline or a catalytic well.

Reconsideration and withdrawal of the rejection of claim 7 over Kaufman in view of Nimberger et al. in view of Benzinger are respectfully requested.

Claim 19 was rejected under 35 U.S.C. §103(a) over Kaufman in view of Nimberger et al. in view of Wu et al. (U.S. Patent 6,712,996). The rejection is respectfully traversed.

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Claim 19 recites additional features of the invention and is allowable for the same reasons discussed above with respect to claim 1 and for the additional features recited therein. In addition, it is respectfully submitted that Wu et al. fail to cure the deficiencies of Kaufman and Nimberger et al. with respect to claim 1. Accordingly, even assuming it would have been obvious to combine Kaufman, Nimberger et al. and Wu et al., the combination would not present a *prima facie* case of obviousness.

Reconsideration and withdrawal of the rejection of claim 19 over Kaufman in view of Nimberger et al. in view of Wu et al. are respectfully requested.

Claim 20 was rejected under 35 U.S.C. §103(a) over Kaufman in view of Nimberger et al. in view of Mauze et al. (U.S. Patent 6,202,480). The rejection is respectfully traversed.

Claim 20 recites additional features of the invention and is allowable for the same reasons discussed above with respect to claim 1 and for the additional features recited therein. In addition, Mauze et al. fail to cure the deficiencies of Kaufman and Nimberger et al. with respect to claim 1. Accordingly, the combination of Kaufman, Nimberger et al. and Mauze et al. fails to present a *prima facie* case of obviousness.

Reconsideration and withdrawal of the rejection of claim 20 over Kaufman in view of Nimberger et al. in view of Mauze et al. are respectfully requested.

Claim 21 was rejected under 35 U.S.C. §103(a) over Kaufman in view of Nimberger et al. in view of Swearingen (U.S. Patent 4,217,463). The rejection is respectfully traversed.

Claim 21 recites additional features of the invention and is allowable for the same reasons discussed above with respect to claim 1 and for the additional features recited therein. Swearingen also fails to cure the deficiencies of Nimberger et al. and Kaufman and the combination fails to present a *prima facie* case of obviousness.

Reconsideration and withdrawal of the rejection of claim 21 over Kaufman in view of Nimberger et al. in view of Swearingen are respectfully requested.

Claim 24 was rejected under 35 U.S.C. §103(a) over Kaufman in view of Nimberger et al. in view of Dotan (U.S. Patent 6,250,802). The rejection is respectfully traversed.

It is respectfully submitted that there is no motivation or suggestion to combine Nimberger et al. and Kaufman with Dotan, as alleged by the Examiner. Firstly, Kaufman does not disclose or suggest a lifting mechanism coupled to the elongated tubular shaft, as recited in claim 23. Kaufman merely discloses that the telescoping shaft subsections 31a, 31b, 31c are connected together by spring biased locks. See column 3, lines 2-21. Secondly, there is no motivation to provide a lifting mechanism to the temperature sensing device of

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Nimberger et al. The temperature sensing device of Nimberger et al. is clearly intended to be fixed to the pipeline 10D by threading the upper mounting housing 62D into the weld flange 24D. As the temperature sensing device of Nimberger et al. is intended to meter fluids in a pipeline, one of ordinary skill would not have been motivated to raise and lower the temperature sensing device into and out of the pipeline.

Thirdly, one of ordinary skill in the art would not have been motivated to combine Dotan with either Nimberger et al. and/or Kaufman. The electronic thermometer of Dotan includes a preheating device to shorten the measuring time. See column 1, lines 7-9. As discussed above, the temperature sensing device of Nimberger et al. is intended to be fixed to the pipeline to meter the temperature of the fluid in the pipeline. As the temperature sensing device of Nimberger et al. is intended to continuously monitor the temperature of the fluid or gas in the pipeline, one of ordinary skill in the art would not have been concerned with shortening the measuring time and would not have been motivated to combine Dotan and Nimberger et al. and/or Kaufman.

Reconsideration and withdrawal of the rejection of claim 24 under 35 U.S.C. §103(a) over Kaufman in view of Nimberger et al. in view of Dotan are respectfully requested.

In view of the above amendments and remarks, Applicant respectfully submits that all the claims are allowable and that the entire application is in condition for allowance.

Should the Examiner believe that any thing further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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